

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District of New Mexico
Name (under which you were convicted): Matthew Channon		Docket or Case No.: 1:13-CR-966-JCH-KK
Place of Confinement: New Mexico (Supervised Release)	Prisoner No.: N/A (Supervised Release)	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. Matthew Channon

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
United States District Court, District of New Mexico
333 Lomas Blvd NW
Albuquerque, NM. 87110

 (b) Criminal docket or case number (if you know): 1:13-CR-966-JCH-KK
2. (a) Date of the judgment of conviction (if you know): 1/22/16
 (b) Date of sentencing: 10/20/16
3. Length of sentence: 12 Months + 1 Day Imprisonment, 2 Years' Supervised Release
4. Nature of crime (all counts):
18 USC § 1343, wire fraud (counts 3, 5, 6, & 7)
18 USC § 1349, conspiracy to commit wire fraud (count 1)
5. (a) What was your plea? (Check one)
 (1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐
6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: Tenth Circuit Court of Appeals
- (b) Docket or case number (if you know): 16-2254
- (c) Result: Affirmed as to conviction, remanded as to forfeiture
- (d) Date of result (if you know): 1/31/18
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: Government improperly introduced evidence in violation of FRE 803(6)(b) and FRE 1006, and government failed to prove forfeiture

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): 17-9242
Certiorari Denied
- (2) Result: _____
- (3) Date of result (if you know): 10/1/2018
- (4) Citation to the case (if you know): _____
- (5) Grounds raised:

Government improperly introduced evidence in violation of FRE 803(6)(b) and FRE 1006

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Tenth Circuit Court of Appeals
- (2) Docket or case number (if you know): 16-2254
- (3) Date of filing (if you know): 2/14/2018

(4) Nature of the proceeding: Petition for rehearing, petition for rehearing en banc

(5) Grounds raised:

Government improperly introduced evidence in violation of FRE 803(6)(B) and FRE 1006

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: Petition for rehearing denied, petition for rehearing en banc denied

(8) Date of result (if you know): 2/27/2018

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐

No ☐

(2) Second petition:

Yes ☐

No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

See Insert One for all grounds and supporting facts

GROUND ONE:

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ☐ No ☐
- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes ☐ No ☐

(2) If your answer to Question (c)(1) is “Yes,” state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

- (5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court’s decision:

Result (attach a copy of the court’s opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

See Insert Two for table of grounds and legal authorities.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

Answered "Yes" to "Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the grounds you are challenging?". Tenth Circuit Court of Appeals, 19-2029, civil?, limited to forfeiture issue

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Donald Kochersberger, 400 Gold Ave. SW #500, Albuquerque, NM 87102

(b) At the arraignment and plea:

Donald Kochersberger, 400 Gold Ave. SW #500, Albuquerque, NM 87102

(c) At the trial:

Marc Robert, FD, 111 Lomas Blvd. NW. #501, Albuquerque, NM. 87102

(d) At sentencing:

Marc Robert, FD, 111 Lomas Blvd. NW. #501, Albuquerque, NM. 87102

(e) On appeal:

Marc Robert, FD, 111 Lomas Blvd. NW. #501, Albuquerque, NM. 87102

(f) In any post-conviction proceeding:

Margaret Katze, FD, 111 Lomas Blvd. NW. #501, Albuquerque, NM. 87102

(g) On appeal from any ruling against you in a post-conviction proceeding:

John Robbenhaar, FD, 111 Lomas Blvd. NW. #501, Albuquerque, NM. 87102

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

Therefore, movant asks that the Court grant the following relief:

Vacate judgment, set aside judgment, set aside convictions, conduct evidentiary hearings, appoint counsel, postpone incarceration until these 2255's proceedings are complete, and/or resentence

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the ~~prison mailing system~~ on 3/11/19.

count clerk's office

(month, date, year)

Executed (signed) on 3/11/19 (date)



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.